



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES
EUGENE I. GESSOW, DIRECTOR

February 13, 2009

GENERAL LETTER NO. 8-C-81

ISSUED BY: Bureau of Medical Supports,
Division of Financial, Health and Work Supports

SUBJECT: Employees' Manual, Title 8, Chapter C, *NONFINANCIAL ELIGIBILITY*,
pages 4b, 51, 60 through 63, 65, 66, 69, 70, and 71, revised.

Summary

This chapter is revised to:

- ◆ Change the income level that represents substantial gainful activity from \$940 to \$980 per month, effective January 1, 2009.
- ◆ Add the text of notice message 608, which is used with Medicaid denials based upon disability determinations made by the Disability Determination Services Bureau (DDS).
- ◆ Clarify the responsibility of the income maintenance worker to attend the appeal hearings for disability determined by DDS staff.
- ◆ Expand the exemption from verifying citizenship and identity to include all children in out-of-home placement (e.g., foster care or relative placement) who are under the placement and care responsibility of the Department through a court order or voluntary placement agreement, regardless of the placement's licensing or payment status.
- ◆ Clarify acceptable records to include with form 470-2472, *Disability Transmittal*, when an applicant is deceased.
- ◆ Remove an obsolete legal reference.

Effective Date

Substantial gainful activity changes are effective January 1, 2009.

All other changes effective upon receipt.

Material Superseded

Remove the following pages from Employees' Manual, Title 8, Chapter C, and destroy them:

<u>Page</u>	<u>Date</u>
4b	October 17, 2008
51	April 10, 2001
60-63, 65, 66, 69-71	February 1, 2008

Additional Information

Refer questions about this general letter to your area income maintenance administrator.

If the *Statement of Citizenship Status* is not signed, the person for whom the attestation is required is not eligible for Medicaid (except emergency medical assistance). Failure to sign this form does not affect the eligibility of the remaining household members if they are otherwise eligible.

If the signed statement is received at a later date, treat it as an application to add that person to the eligible group.

Verifying Citizenship and Identity

Legal reference: 42 CFR 435.406 and 435.407; 441 IAC 75.11(2)“f”

Unless specifically exempted, all Medicaid applicants or members claiming to be United States citizens are required to verify their citizenship and identity as a condition of eligibility.

The requirement to provide proof of citizenship and identity **does not** apply to:

- ◆ Current recipients of Supplemental Security Income (SSI), including 1619b individuals.
- ◆ Current recipients of Social Security disability income (SSDI) (benefits based on the person’s disability).
- ◆ Current recipients of Medicare.
- ◆ Children in “newborn” status.
- ◆ Children in out-of-home placement (e.g. foster care or relative placement) under the placement and care responsibility of the Department through a court order or voluntary placement agreement, regardless of the placement’s licensing or payment status.
- ◆ Children currently in IV-E funded subsidized adoption or subsidized guardianship.
- ◆ Applicants for presumptive Medicaid eligibility (but they are no longer exempt when they apply for ongoing Medicaid).

Maintain any documentation needed to show the exempt status in the person’s case file.

Examples of documents showing an exempt status include:

- ◆ State Data Exchange (SDXD) printout showing current receipt of SSI
- ◆ Benefit award letter from Social Security Administration
- ◆ Income and Eligibility Verification System (IEVS) printout or copy of Medicare card showing current receipt of Medicare
- ◆ Other documents showing the person meets one of the exempt statuses

Mr. and Mrs. S live together. Mr. S receives Medicaid as an SSI-related person in January, when he and Mrs. S separate. Mr. S is considered as an individual for February. Only his income and resources are considered. No income or resources owed exclusively by Mrs. S are considered for Mr. S's eligibility for February.

See 8-I, [Income and Resources of Married Persons](#), when one or both spouses are in a medical institution.

Presence of Age, Blindness, or Disability

Legal reference: 42 CFR 416.801 and 416.901; 441 IAC 50.2(1), 50.2(3)“d,” 75.1(249A), 75.1(39)“a”(1), 75.20(249A), and 76.2(249A); Balanced Budget Act of 1997 (P.L. 105-33)

To be eligible for Medicaid under an SSI-related coverage group, a person must be:

- ◆ Aged 65 or older, or
- ◆ Blind, or
- ◆ Disabled.

You may accept the Social Security Administration's verification of age when a person is applying for Medicaid based on age. (Note that a person does not have to be 65 to receive Social Security benefits.) If an applicant claims to be at least 65 years old and has not applied for Social Security or SSI, refer the person to the Social Security district office to apply for benefits.

If a person is eligible for any of the following benefits, you do not need to further verify age, blindness, or disability:

- ◆ Supplemental Security Income benefit.
- ◆ Social Security disability benefits.
- ◆ Railroad Retirement benefits based on Social Security disability criteria.

Railroad Retirement benefits are provided to disabled adult children, former railroad workers who are disabled, and to survivors of a railroad employee if the survivors are disabled and at least age 50. Send the *Authorization for Release of Information* (form 470-0461 or 470-0461(S)) to the Railroad Retirement Board to verify whether the person is getting benefits based on Social Security criteria for disability.

“Substantial gainful activity” means performance of significant physical or mental activities in work for pay or profit. Work is either paid in cash or in kind. Profit may or may not be realized. The current earnings threshold for determining “substantial” activity is \$980.

“Significant activities” are useful in a job or business and have economic value. Activities **not** considered substantial gainful activity are self-care, household tasks, unpaid training, therapy, school attendance, clubs, and social programs.

If the person **is** engaged in substantial gainful activity despite physical or mental limitations, deny the application because the person is not disabled (unless the person would qualify under MEPD).

If the person **is not** engaged in substantial gainful activity (or would qualify under MEPD), the next step is to send the medical evidence to the DDS. Do this no later than 15 calendar days from the application date. (See [Submitting Medical Evidence to DDS](#).)

When the applicant has also applied for disability benefits administered by the Social Security Administration, wait on the Social Security Administration decision (except in Medically Needy when the Social Security Administration is looking at Title II eligibility only). Track the progress of the Social Security disability determination as described in 8-B, [Concurrent Medicaid and Social Security Disability Determinations](#).

The following sections give further instructions on:

- ◆ [Determining substantial gainful activity for an employee](#)
- ◆ [Determining substantial gainful activity for a self-employed person](#)
- ◆ [Submitting medical evidence to DDS](#)
- ◆ [Actions when DDS approves disability](#)
- ◆ [Review of disability](#)

Substantial Gainful Activity for an Employee

Legal reference: 20 CFR 416.974 and 441 IAC 75.1(39)“a”(1)

To determine substantial gainful activity for an employed person, calculate the person’s countable income by averaging gross income over the time the income was earned after the disability occurred.

Note: Do not consider substantial gainful activity for eligibility under the Medicaid for employed people with disabilities (MEPD) coverage group.

Average seasonal work over the season to arrive at a monthly countable income. Include in-kind room and board as countable earnings. Do not count:

- ◆ Earnings of volunteers under the Small Business and Domestic Volunteer Acts.
- ◆ Subsidies the employer pays an impaired person that are not earned through the person’s productivity. Contact the employer to determine the subsidy.

If the employer cannot calculate the subsidy, compare the work to similar work of an unimpaired person in the community, and establish the value by the prevailing wage scale.

After calculating the countable income, deduct work expenses related to the person’s disability. See 8-E, [Deduction for Impairment-Related Work Expenses](#). If the remainder **exceeds** \$980 per month, the person engages in substantial gainful activity, and therefore is not disabled.

If the average countable earnings are **less than** \$300, the person is not engaged in substantial gainful activity. Complete a disability determination.

If the countable earnings are **between** \$300 and \$980, there are two more tests to determine substantial gainful activity:

- ◆ **Comparability.** Compare the person’s work to that of unimpaired people in the community. Look at time, energy, skills, responsibility, and quantity (rate and hours). If the work is the same as that done by unimpaired people, the person engages in substantial gainful activity and is not disabled.

- ◆ **Worth.** If the person's work activity is worth more than \$980 per month to the business, the person is engaging in substantial gainful activity, even if the person's work activity is not comparable to that of an unimpaired person.

If the person is in the military, wages may continue and the person may be placed on limited duty. The value of work in the military must be compared to similar work in a nonmilitary setting. Ask your income maintenance administrator to contact the Division of Financial, Health and Work Supports to determine the real value of the work.

There is no substantial gainful activity if the person's former job made many job accommodations or the person became more incapacitated, and the person cannot find another similar job. Loss of work detrimental to health does not result in substantial gainful activity.

There may be substantial gainful activity if the person worked for longer than six months despite the impairment, lost the job, and applied for Medicaid in the same month. If there is reasonable doubt, do not consider the person engaged in substantial gainful activity.

Substantial Gainful Activity for a Self-Employed Person

Legal reference: 20 CFR 416.975, 441 IAC 75.1(39)"a"(1)

Determine "substantial gainful activity" for a self-employed person based on the following three tests:

- ◆ [Significant services and substantial income](#)
- ◆ [Comparability of work](#)
- ◆ [Work activity](#)

If the person fails all three tests, the person is not engaged in substantial gainful activity, and a state disability determination needs to be done.

If there is reasonable doubt whether the person engages in substantial gainful activity, assume the person is not engaged in substantial gainful activity.

Note: Do not consider substantial gainful activity for eligibility under the Medicaid for employed people with disabilities (MEPD) coverage group.

Significant Services and Substantial Income Test

If **significant services** are combined with **substantial income**, the person is involved in substantial gainful activity. “Significant services” are performed when a person other than a farm landlord operates a one-person business.

If the business involves the services of more than one person, the owner or partner renders significant services if the owner or partner contributes more than half the time required for management of the business or more than 45 hours a month in management time.

A farm landlord (one who rents farmland to another farmer) renders significant services if the landlord materially participates by doing any of the following:

- ◆ Gets a Social Security earning credit on the federal income tax return.
- ◆ Advises or consults with the renter and inspects production periodically.
- ◆ Furnishes a large portion of the machinery and financing.

A self-employed person has “substantial income” if:

- ◆ The countable income is over \$980 per month.
- ◆ The countable income meets the community standard of livelihood for a self-employed person engaged in similar business.

To determine countable income:

1. Use only the income of the person’s productivity, not the productivity of the person’s agent.
2. Subtract any business expenses from the gross self-employment income.
Also subtract:
 - ◆ Unpaid help by a spouse, children, or others.
 - ◆ Soil bank income if included in farm income from the tax return.
 - ◆ Impairment-related expenses if not deducted as a business expense.
 - ◆ Business expense paid for a self-employed person by a third party, such as rent paid by Vocational Rehabilitation or space furnished by a third party.

If these activities are comparable to that of an unimpaired person in the community engaged in the same or similar business, the person is engaged in substantial gainful activity. If not, there is not substantial gainful activity; consider the third test.

Work Activity Test

If, although not comparable to the work of an unimpaired person, the value of the work is more than \$980 per month when considered to what an employer would pay an employee to do the same job, the person engages in substantial gainful activity. Deny the application because the person is not disabled.

Submitting Medical Evidence to DDS

Legal reference: 441 IAC 75.1(39)“a”(1), 75.20(2)“b”

Complete and submit the following forms to Disability Determination Services (DDS) to use when making a decision about disability:

- ◆ Form 470-2465, *Disability Report for Adults*, or form 470-3912, *Disability Report for Children*. The applicant or the applicant’s representative completes the applicable form, which includes a release of information. Screen the report to make sure the correct person signed the form, as follows:
 - If the release is for mental health information, only an applicant 18 years of age or older or a legal representative can sign.
 - If the release is for substance abuse information, only the applicant can sign the form, regardless of age.

Include with the *Disability Report*:

- Any available supplemental vocational information.
- Any information available from the Social Security Administration.
- Copies of medical reports or letters from the provider about the medical condition of the applicant, if available.
- For an adult applicant, evidence about the work activity, even if the work done was not substantial gainful activity.
- For a child applicant, school information, any involvement with vocational rehabilitation or other social services, and any work history.

- When the applicant is deceased, either :
 - Medical records including a note certifying the cause and date of death signed by a medical practitioner.
 - A death certificate. (When a person dies at home and has no history of medical treatment for the cause of death, a death certificate is required.)
- ◆ Form 470-4459 or 470-4459(S), *Authorization to Disclose Information to the Iowa Department of Human Services*. The release allows DDS to contact sources to get the information needed to determine disability.

Send a signed release for each source listed on the applicable *Disability Report* and the additional sources of information for children. This includes releases for any doctors who provide care in a hospital.
- ◆ Form 470-2472, *Disability Transmittal*. This form contains case-related information that helps DDS determine disability. (For an MEPD applicant, check the status, “MEPD – SGA not considered in first step of disability determination.”)

If an applicant moves before a disability determination is completed, provide the new address to DDS by entering it on a copy of the *Disability Transmittal* and sending the form to DDS. (The DDS address is in the upper left corner of the form.)

If DHS denies a Medicaid application for nondisability reasons (over resources, no longer a resident, etc.) after a disability determination has been sent to DDS, notify DDS to stop the disability determination using form 470-2472, *Disability Transmittal*.

DDS may request additional information from the applicant and may require the applicant to have a medical examination. DDS pays for medical information and transportation.

Disability Approved by DDS

Legal reference: 441 IAC 50.1(249), 75.20(1)

DDS issues its decision about eligibility using form 470-2472, *Disability Transmittal*, which is returned to you along with the entire disability file. Information that finds the applicant disabled is entered in Part II, Item 1.

Issue a manual notice to approve Medicaid when DDS has determined the applicant is disabled. Use the following wording:

If disability was attained through appeal of a disability denial, also include a copy of the proposed and final appeal decisions on the disability.

Denial Based on Disability

Legal reference: 441 IAC 75.1(39)“a”(1), 75.20(2)

SSI-related eligibility can be denied based on disability determination by either the Social Security Administration or by DDS on behalf of the Department of Human Services.

When the eligibility decision is based on a Social Security Administration denial of disability, deny Medicaid using the Automated Benefit Calculation (ABC) system notice reason code 824, which states:

“_____ is not blind or disabled. The Social Security Administration denied benefits as you are not disabled at this time.

We are required to follow Social Security’s decision. If you are approved for disability benefits at a later date, please tell us within 10 days of the date on your notice from Social Security.”

Note: When the Social Security Administration has denied benefits as not disabled because the person is engaging in substantial gainful activity (SDX payment status code N44) and the person could qualify under Medicaid for employed people with disabilities (MEPD), do not deny Medicaid based on the Social Security Administration denial. The Department must make a disability determination on medical impairments.

When eligibility is denied based on a DDS denial of disability, DDS issues its decision using form 470-2463, *Explanation of Disability Determination*, which is returned to you along with the entire disability file. The finding that the applicant is **not** disabled is also entered in Part II, Item 2, of the *Disability Transmittal*. Send the applicant:

- ◆ A *Notice of Decision* denying the application because the person is not disabled. Use notice message 608, which states: “... you are not blind or disabled. You will get a separate letter that tells you about the disability decision.”
- ◆ A copy of form 470-2463, *Explanation of Disability Determination*.

If a child is found no longer disabled based on a review against adult criteria, cancel assistance based on disability no sooner than the month after the child’s eighteenth birthday.

The following sections give more information on procedures for:

- ◆ [When a person appeals a denial of disability](#)
- ◆ [When Social Security denies disability after the Department approved it](#)
- ◆ [When an Social Security denial is reversed in appeal](#)

Appeal of a Disability Denial

Legal reference: 441 IAC 7.8(17A)

When a person appeals a disability denial:

1. Within 24 hours of receipt, send the appeal request to the DHS Appeals Section, Fifth Floor, 1305 E Walnut Street, Des Moines, IA 50319-0114. Include a copy of the *Notice of Decision*.
2. Within ten days, submit a summary of the action taken to the Appeals Section. Include the following information:
 - ◆ The SSI-related coverage groups under which the person is eligible.
 - ◆ The reason benefits were denied (based on Social Security Administration decision or DDS decision).
 - ◆ If benefits were denied based on a Social Security Administration decision:
 - The date of the decision.
 - Proof of the Social Security Administration denial of disability.
3. If the disability determination was done by DDS, for DHS, send a complete copy of the disability file to each of the following:
 - ◆ DHS Appeals Section, Fifth Floor, 1305 E Walnut Street.
 - ◆ The appellant.
 - ◆ The appellant's representative.
 - ◆ Disability Determination Services Bureau, Disability Hearing Unit, 535 SW 7th Street, Des Moines, Iowa 50319.
4. Keep the original disability determination file with the case record.

The Department of Inspections and Appeals notifies DDS, the local office, the appellant, and the appellant's representative of the hearing date.

If DDS made the disability determination, a DDS representative participates in the appeal by explaining the disability determination decision and answering the questions of the administrative law judge, the appellant, or the appellant's representative. The DHS worker is responsible to explain the decision to deny Medicaid.

At the time of the hearing, the administrative law judge may determine that additional medical examinations are required to make a decision. DDS is responsible for obtaining these services.

After the administrative law judge issues a written order to DDS describing the required tests or examinations, DDS requests the disability file from the local office. DDS may ask you to obtain signed releases from the client as needed. DDS will then schedule the tests, provide the results to the administrative law judge, and return the disability file to your office.

If the final decision finds for the client, send a notice as described in [Disability Approved by DDS](#).

If Social Security Later Determines the Member is Not Disabled

Legal reference: 441 IAC 75.20(5)

A member may have been approved for Medicaid or State Supplementary Assistance based on the Department's determination of disability but later be denied by the Social Security Administration as not disabled. Because the Social Security Administration allows 65 days to appeal, a Social Security decision cannot be considered final until the 65-day appeal period has expired.

In this situation, continue Medicaid and State Supplementary Assistance for 65 days from the date of the Social Security denial. If the member has not filed an appeal with Social Security by the end of the 65 days, cancel benefits with timely notice. If the member appeals the denial within 65 days, continue benefits until there is a final decision. This could be either:

- ◆ A decision issued at the Social Security Administration Review Council level.
- ◆ The most recent decision that the person does not pursue to the next appeal level by the end of 65 days. See [Social Security Administration Appeal Process](#).